IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 471 of 2003

Reserved on : 29.10.2007.

Date of Decision : October 30, 2007

Udai Ram & another …Appellants

Versus:

Ram Lal …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *Yes.*

For the appellants: Mr. Bimal Gupta, Advocate.

For the respondent. Mr. G. D. Verma, Sr. Advocate with Mr. B. C. Verma, Advocate.

Sanjay Karol, J.

By way of present appeal, the plaintiffs has assailed the judgment and decree dated 25.9.2003 passed by the Addl. District Judge, Sirmaur District at Nahan in Civil Appeal No. 22/1 of 2002 titled as Udai Ram & another vs. Ram Lal.

For the purpose of convenience, appellants are hereinafter referred to as 'the plaintiffs' and the respondent is referred to as 'the defendant'.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Plaintiffs suit is for possession of land measuring 1 biswa 7 biswancies bearing khasra No. 322/85/1 situated in village Sataun, Tehsil Paonta Sahib, District Sirmaur, H.P. The defendant purchased land adjacent to the suit land and started raising construction thereupon. A dispute arose as to whether the defendant had actually encroached upon the plaintiffs land and raised construction thereupon. Shri Inder Singh son of one of the plaintiffs on 30.12.2001 moved an application and got the land demarcated from the Tehsildar, Paonta Sahib in the presence of Shri Kuldeep Singh, son of the defendant. It was so found that the defendant had encroached upon the plaintiffs' land, situate on Khasra No. 322/85/1 carved out of the original Khasra No. 132/85. Inspite of plaintiffs' request the possession was not handed over by the defendant and consequently the suit for possession was filed.

Importantly in the written statement, defendant has not denied the plaintiff's ownership of Khasra No. 322/85 but has denied encroachment thereupon. On merits, it is so pleaded that the construction (residential house) was carried out in the year 1990. On the basis of illegal demarcation report, the plaintiffs' son Inder Singh filed Civil Suit No. 210/1 of 2000 titled as Inder Singh vs. Ram Lal, which was dismissed on 29.12.2001 and, therefore, the present suit (subsequent) is an abuse of process of law and has been filed only to harass the defendant.

On the pleadings of the parties, the trial Court framed the following issues:-

"1. Whether the plaintiffs are entitled for possession of land comprised in Khasra No. 322/85/1 on the basis of title? ……OPP

2. Whether the defendant raised the house on the suit land in the year 1990. If so, its effect? …..OPD

3. Whether the demarcation conducted by the Tehsildar, Paonta Sahib, is illegal? …OPD

3. Relief."

Plaintiffs witnesses S/Shri Jalam Singh (PW-2) and Shanti Ram (PW-3) supported the version of the plaintiffs. Shri Devender Singh Kanwar (PW-4) Tehsildar, who had carried out the demarcation, under the instructions of Sub Divisional Magistrate deposed that he had issued a notice to defendant Ram Lal and inspite of that he did not participate in the demarcation proceedings. The method adopted by him for carrying out the demarcation was elaborated by him in his testimony. The demarcation report is Ext.A-2

Defendant Shri Ram Lal (DW-1) deposed that he purchased land bearing Khasra Nos. 573/315 and 539/322 measuring 2 biswas and in the year 1990 constructed a house thereupon. He, however, admitted his son being present at the time of demarcation proceedings. Defendant placed on record certified copies of the revenue record i.e. jamabandies Exts.D-1, D-2, D-3, D-4 & D-5 pertaining to different years to

prove ownership and possession of his land. Certified copy of the judgment and decree passed in Civil Suit No. 210/1 of 2000 was exhibited as Ext.A-3.

Issue No. 1 was decided against the plaintiffs and issues No. 2 & 3 were decided in favour of the defendant. Plaintiffs' suit was dismissed vide judgment and decree dated 29.12.2001 passed by the Sub Judge Ist Class(2), Paonta Sahib, District Sirmaur, in Civil Suit No. 210/1 of 2000 titled as Inder Singh vs. Ram Lal with the following observations:-

> "By applying the aforesaid dictum of law, and demarcation report Ext.A2, it is found that compliance of Instruction No.1 was not carried out and the fixation of boundary is a quasi judicial function affecting the civil rights of the parties. Though, report and order Ext.A2 is perse-admissible for evidence and no fault found with it, but in my humble opinion, its probative value is nil. There is no other document on record which could show that any part of the plaintiffs has been occupied by the defendants.
>
> There is on record evidence that defendant has raised his own house in the year 1990 and the existence of abadi in the land of the defendant is shown reflecting in jamabandi Exts. D2 and D5.
>
> Keeping in view the aforesaid discussion, issue No.1 is decided against the plaintiffs, whereas, issues No. 2 and 3 are decided in favour of the defendants."

Therefore the plaintiffs were non-suited for the sole reason that the demarcation report was faulty. No reason

whatsoever was assigned while arriving at its conclusion with regard to Issues No. 2 & 3.

Assailing the aforesaid judgment and decree, the plaintiffs' appeal was also dismissed vide impugned judgment and decree dated 25.9.2003. While deciding so, the Ist Appellate Court recorded that the case pertained to a boundary dispute and while concurring with the findings of the trial Court held that the demarcation report had not been carried out in accordance with the instructions issued by the State. Importantly, issues No. 2 & 3 were not dealt with at all.

Learned counsel for the appellants/plaintiffs has pressed the provisions of Chapter 1 Part M(1) of the Rules & Orders of the Punjab and Haryana High Court as applicable to the High Court of Himachal Pradesh, to contend that in cases pertaining to boundary dispute the Court is required to ascertain the factual position by appointing a Local Commissioner. In any event the demarcation was carried out by the revenue authorities in accordance with law and in the presence of the sons of the parties and the same was approved by the SDM also. Learned counsel has further argued that except for bald observations, no proper reasoning has been given by the Appellate Court to hold that the report is in violation of the instructions. To support his contention, he has also referred to the decisions in ***Bali Ram*** v. ***Mela Ram and another*** (2002(3) Shim.L.C. 131) and ***Prithi Singh*** v. ***Bakshi Ram and another*** (HLJ 2006(1) HP 5).

Per contra, learned counsel for the respondent/ defendant has argued that the plaintiffs have to stand on their own legs and the Court cannot collect evidence to support the plaintiffs case by appointing a Local Commissioner. He has relied upon a decision reported in ***P.S. Chhatwal and another*** v. ***State of Himachal Pradesh*** (HLJ 2004(1) 11), ***The Institution of Engineers (India) and another*** v. ***Bishnu Pada Bag and another*** (AIR 1978 Calcutta 296) and ***Padam Sen and another*** v. ***The State of Uttar Pradesh*** (AIR 1961 SC 218). According to him, the suit is false, frivolous, malafide and an abuse of process of law as the same was filed immediately after the dismissal of the earlier suit.

Further, concurrent findings of fact are not to be interfered with and in support thereof, he has referred to the decisions of the Apex Court in ***M. Nadar Keshavan Nadar*** v. ***Narayanan Nadar Kunjan Nadar*** (2000(X) SCC 244), ***Ramani*** v. ***Saraswathi*** (2000(X) SCC 458), ***Shankareppa M. Mutanki*** v. ***B. M. Mutanki*** (2000(IX) SCC 254), ***Mohmd. Abdul Muqtedar v. Shaikh Fakruddin*** (2000(IX) SCC 384) and ***Premabai*** v. ***Jnaneshwar Ramakrishna Patange*** (2000(IX) SCC 418).

Perusal of the judgment and decree dated 29.12.2001 passed in Civil Suit No. 210/1 of 2000, would show that both the suits do not pertain to the same and similar property. In any case, the suit was dismissed essentially on the locus of the plaintiffs to institute the same. Therefore, it cannot be said that

the present suit is an abuse of process of law or has been filed only to harass the defendant. The parties to the suit are also different.

It is evident from the judgments of the Courts below that no reasons whatsoever have been given on the basis of which the Court has come to its conclusion with regard to issues No. 2 & 3. The Courts below were obliged to assign reasons while deciding all the issues and the points in issue or controversy. It is not that all the issues are inter-connected. Reasons given qua one issue cannot be looked to arrive at a conclusion for the other issues. Therefore, in my view, keeping in view the ratio of law laid down by this Court in ***Om Parkash and others*** (supra), the judgment and decree of the Court below needs to be set aside on this ground alone and the matter needs to be remanded back for trial.

It is evident that the Courts below have not touched the merits of the controversy in issue and have rendered their decision solely on the ground that the demarcation carried out was not in accordance with the provisions of the instructions issued by the department. Whether there was any encroachment or not could have been ascertained by simply appointing a Local Commissioner. This was totally in conformity of the High Court Rules and Orders, relevant portion of the same is reproduced hereinbelow:-

> "1. **Local Inquiry:** In "Head-Shikni" suits and other suits of boundary disputes of land falling within the

jurisdiction of Civil Court it is generally desirable that enquiry be made on the spot. This can usually be done in the following ways.

(a) by suggesting that one party or the other should apply to the Revenue Officer to fix the limits, under Section 101(1) of the Punjab Land Revenue Act. Time for such purpose should be granted under Order XVII, Rule 3, of the Code of Civil Procedure;

(b) by appointing a Local Commissioner; and

(c) by the Court itself making a local enquiry."

Importantly, record shows that before the first Appellate Court the defendant himself had moved an application under Order 41 Rule 27 CPC for producing certain documents on the basis of which the demarcation report was prepared. Notice on the application was issued but, however, before any order could be passed, the defendant withdrew the same which is evident from the order dated 19.9.2003.

In the written statement, the defendant in para-1 has admitted that the plaintiffs are owners of Khasra No. 322/85 measuring 1-19 bighas. According to the defendant, boundary between the plaintiffs and the defendant's land is divided by 'doll' (natural boundary). Defendant has not taken any plea of adverse possession. With regard to the presence of the defendant's son at the time of demarcation, the trial Court has recorded as under:-

"He claimed that his son was present at the time of demarcation .

PW-4 Devender Singh Kanwar, Tehsildar conducted the demarcation at the instance of SDM and his testimony further showed that Ram Lal was issued a notice and despite notice he did not appear in the demarcation.

Admittedly, report Ext.A2 on record is an order passed by Revenue Officer in exercise of statutory duties u/s 107 H.P. Land Revenue Act and it is perse admissible and there are two aspects of a document namely admissibility of the document and its probative value.

The title of the plaintiff has not been denied by the defendant. Defendant has not claimed adverse possession either."

In my view, having come to the conclusion that the dispute inter se between the parties was a boundary dispute, the Court ought to have appointed a Local Commissioner to ascertain the dispute, as has been held by this Court in ***Bali Ram*** (supra) and ***Prithi Singh*** (supra) which are the decisions rendered by this Court in exercise of its appellate and revisional jurisdiction. In ***Bali Ram*** (supra), the Court held as under:-

"14. Be it stated that whatever was within the power of the plaintiff to show that a piece of land owned by him has been encroached upon by the defendants, has been done by him. If the revenue agency has prepared a report which may not be according to rules, the case of the plaintiff could not have been thrown out simply for the lapses committed by the revenue agency/ Tehsildar in carrying out the demarcation. No amount of oral evidence which could be led by the plaintiff, would have established the identity of the encroached

land. To identify it the only way was to get it demarcated. The plaintiff adopted that course and nothing more could have been done by him. In case the Appellate Court entertained any doubt about the correctness of the demarcation and the report, the prayer of the plaintiff for appointment of Local Commissioner for demarcation of the suit land to find out the extent of the encroachment, if any, ought to have been acceded. It is the duty of the courts to ensure that substantial justice is delivered to the parties and that for the mistake of any Government agency in demarcating the land, a party should not be deprived of the justice on merits by taking recourse to technicalities.

15. Once the learned District Judge had entertained doubt about the correctness of the demarcation given by the Tehsildar, he ought to have appointed a Local Commissioner to demarcate the disputed area to find out whether there was any encroachment and if so, to what extent, instead of proceeding to dismiss the suit. The impugned judgment and decree, therefore, cannot be sustained."

The decision cited by the learned counsel for the respondent in ***P. S. Chhatwal and another*** (supra) is distinguishable and perincurium for the reasons that the Court has not noticed and considered the provisions of the High Court Rules and Orders referred to hereinabove.

The decision rendered in ***Padam Sen and another*** (supra) is also distinguishable and of no assistance to the defendant. Here the Court was considering the scope of inherent

powers of the Court to appoint a Local Commissioner to cease the books of accounts on the apprehension of the party that the same would be tampered with. The party had no right in law to claim the documents in question and, therefore, the Court came to the conclusion that the inherent powers could not be exercised to forcibly seize the property from another party who had full right over the same. Similarly, the decision of Calcutta High Court in ***The Institution of Engineers (India)*** (supra) is also distinguishable on facts and not applicable to the facts of the present case.

In view of my decision on the limited point, the other contentions made by the learned counsel for the appellants are not dealt with. In this view of the matter, I am also not dealing with other judgments referred to by the learned counsel for the respondent.

In the given circumstances, the only course left open to the Court is to remand the case to the trial Court with the direction to appoint a Local Commissioner to carry out the local investigation and thereafter decide the case on merits in accordance with law.

As a result, the appeal is allowed in the facts and circumstances. No order as to costs.

(Sanjay Karol),
Judge.

October 30, 2007.
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